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August 21, 2018

Detective Sean Prosser
Idaho State Police
615 W. Wilbur Ave.
Coeur d'Alene, ID 83814

Re: Idaho State Police Report #K17-000062

Dear Detective Prosser:

I have concluded my review of the detailed report you forwarded to me regarding the incident. Thank you for your work and the work of the other officers involved in the investigation. I have concluded that the officer involved in the attempt to arrest Craig Johnson because of a court-ordered felony arrest warrant acted appropriately and did not violate the law in attempting to arrest Mr. Johnson.

In reaching this conclusion, I have considered only the information known to Sgt. Deem at the time of the confrontation at Mr. Johnson's residence. This unfortunate set of circumstances began on September 24, 2017, when Mr. Johnson's wife Robin called the Bonner County Sheriff's Office to request a welfare check on Mr. Johnson. Just before midnight, Deputy Madden arrived at Mr. Johnson's residence at 664 Private Drive in Coolin. Deputy Madden's patrol vehicle was marked with paint identifying it as a Bonner County Sheriff's Office patrol car, and had an emergency light bar on top. After getting out of his vehicle, Deputy Madden saw Mr. Johnson come out of a second story door and onto a porch. Mr. Johnson was holding a black pistol and yelled at Deputy Madden to "get the fuck off my property" and "you're on private property."

Deputy Madden's announced that he was from the Bonner County Sheriff's Office and ordered Mr. Johnson to drop the pistol. Deputy Madden drew his weapon and moved from the driver's side of his vehicle to the passenger side in order to take cover behind his vehicle. Deputy Madden told Mr. Johnson that he was there at the request of Mr. Johnson's wife. Mr. Johnson continued to yell at Deputy Madden to leave and demanded that Deputy Madden drop his weapon. Although he tried to communicate with a dispatcher by hand held radio, Deputy. Madden was unable to do

so. Deputy Madden continued to tell Mr. Johnson to put down his weapon, and Mr. Johnson continued to tell Deputy Madden to leave. After approximately one minute of these back and forth demands, Mr. Johnson went back into his residence. Deputy Madden got in his patrol vehicle and left.

On September 25, 2017, a felony arrest warrant was issued for Mr. Johnson. On September 26, Bonner County officers, including members of the Emergency Response Team (ERT), attempted to arrest Mr. Johnson at his residence. The officers had been told about the incident on September 24 between Mr. Johnson and Deputy Madden. The ERT was used for officer safety because of the September 24 incident.

Officers arrived at Mr. Johnson's residence at about 8:30 a.m.. Two ERT officers, Sgt. Sean Deem ("Deem") and Deputy Ted Swanstrom ("Swanstrom") were behind the residence, using bushes and trees for cover. The ERT lead officer, Detective Stella ("Stella"), was with other members of the ERT in front of Mr. Johnson's residence. Stella attempted to contact Mr. Johnson by phone and by using a PA system from an armored Bearcat vehicle. Mr. Johnson was advised by Stella over the public address ("PA") system that they were officers and that Mr. Johnson needed to come out of the residence with his hands up. Mr. Johnson did not respond to the directions given over the PA system. Mr. Johnson answered two phone calls from Stella. In one call he told Stella he was not home. Mr. Johnson hung up on Stella during the second call. After trying to contact Mr. Johnson for 20-30 minutes, Stella heard over the radio that Mr. Johnson left the residence in the back. Stella did not see the interaction between Mr. Johnson, Deem and Swanstrom, but heard two "drop the gun" commands before hearing two gunshots. Stella went to the back of the residence and found Mr. Johnson on the ground with a pistol close to his right hand. Stella administered first aid measures to Mr. Johnson, who died from two gunshot wounds.

Both Deem and Swanstrom are sniper observers on the ERT. They went to the back of the residence to observe and report what was happening to the other members of the ERT, provide cover for other members of the team, and let the other team members know if Mr. Johnson fled out the back of the house. Swanstrom and Deem heard the announcements over the PA system. Deem saw Mr. Johnson leave the residence from the back deck and come down the stairs. Deem lost sight of Mr. Johnson as he walked behind a bush. While Mr. Johnson was still out of Deem's sight, he heard Swanstrom yell twice for Mr. Johnson to drop his gun. Deem saw Mr. Johnson walking towards Swanstrom with his gun pointed at Swanstrom, and Deem raised his rifle and shot Mr. Johnson twice. Mr. Johnson went down. Deem heard Swanstrom yelling at Mr. Johnson not to move. Mr. Johnson said "fuck you" in response. Swanstrom and other ERT members converged to where Mr. Johnson was lying, and Mr. Johnson's pistol was removed from near his head.

Swanstrom also lost sight of Mr. Johnson behind bushes after Mr. Johnson came out of the residence and down the stairs. After Mr. Johnson came out from behind the bushes and back into Swanstrom's view, he was about 20 yards from Swanstrom and looking back toward the residence. Swanstrom identified himself as an officer and at approximately the same time saw that Mr. Johnson had a pistol in his hand. Mr. Johnson was holding the pistol by the barrel, with the barrel facing towards Mr. Johnson. Swanstrom yelled "gun" and believes he told Mr. Johnson twice to drop the gun. When Mr. Johnson became aware of Swanstrom's presence, he grabbed the gun with his right hand and pointed it at Swanstrom. Swanstrom was in the process of raising his rifle to point it at Mr. Johnson when he heard Deem fire two rounds and then saw Mr. Johnson fall

down. Swanstrom then moved towards Mr. Johnson, telling him not to move. Swanstrom heard Mr. Johnson say “fuck you” in response to those commands.

The use of force must be analyzed considering the totality of the circumstances, taking into consideration the facts and circumstances of the particular case, including whether the armed person posed an immediate threat to the safety of the officers or others, whether the armed person is actively resisting officers, and the severity of the crime the armed person might be committing. The United States Supreme Court has held that an officer's use of deadly force is reasonable if “the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.” *Tennessee v. Garner*, 471 U.S. 1, 3, 105 S. Ct. 1694, 1697, 85 L.Ed.2d 1 (1985). Any evaluation of the use of force must include a recognition “that police officers are often forced to make split-second judgments-in circumstances that are tense, uncertain, and rapidly evolving . . .” *Graham v. Connor*, 490 U.S. 386, 396-97, 109 S. Ct. 1865, 1872, 104 L.Ed.2d 443 (1989).

[U]nder [*Graham v. Connor*, 490 U.S. 386, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989)], we must avoid substituting our personal notions of proper police procedure for the instantaneous decisions of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes “reasonable” action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.

Smith v. Freland, 954 F.2d 343, 347 (6th Cir.1992).

Sgt. Deem was aware that Mr. Johnson had pointed a gun at a deputy two days earlier when the deputy was at the residence to do a welfare check at the request of Mr. Johnson’s wife. He heard Detective Stella identify himself as an officer and try to get Mr. Johnson to come out of the residence to be arrested without incident. Sgt. Deem observed and heard that Mr. Johnson did not come out of the residence as requested. Sgt. Deem saw Mr. Johnson leave the residence from the rear, and come towards the location where Sgt. Deem and Deputy Swanstrom were located. Sgt. Deem heard Deputy Swanstrom tell Mr. Johnson to drop his gun twice, and then saw Mr. Johnson pointing the gun at Deputy Swanstrom. Sgt. Deem’s actions were appropriate in the circumstances to prevent the use of deadly force by Mr. Johnson. Therefore, I conclude that Sgt. Deem committed no crime in this matter.

Please feel free to contact me with questions.

Yours very truly,

A handwritten signature in black ink that reads "Barry McHugh". The signature is written in a cursive, slightly slanted style.

Barry McHugh
Prosecuting Attorney